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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,651

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Georg Geywitz

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EXAMINER

LEWIS, TISHA D

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,651	<b>Applicant(s)</b> GEYWITZ ET AL.	
	<b>Examiner</b> TISHA D. LEWIS	<b>Art Unit</b> 3655	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 and 15-20 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

The following is a response to the amendment received October 6, 2010 which has been entered.

#### ***Response to Amendment***

Claims 1-20 are pending in the application. Claims 15-20 are new.

-The 112 1<sup>st</sup> and 101 rejection of claims 1-14 has been withdrawn due to applicant amending claims 1 and 5 with an active step for delimiting how the method is practiced.

-The 112 2<sup>nd</sup> rejection of claims 1, 5-10, 13 and 14 have been withdrawn due to applicant amending claims 1, 5, 10, 13 and 14 accordingly. Claim 4 is corrected accordingly, but since claim 2 wasn't and claim 4 depends therefrom, it will still be rejected via rejection to claim 2.

-The 102(b) rejection of claims 1 and 10 has been withdrawn due to applicant's amendment "current" to the limitation "at least one engine characteristic".

#### ***Response to Arguments***

Applicant's arguments with respect to the Hess art's operating variables not being approval criteria have been fully considered and are persuasive. The 103(a) rejection of claims 1, 5, 8-10 and 14 has been withdrawn.

Applicant's arguments filed have been fully considered but they are not persuasive. As to applicant's argument that the FR art lacks approval criteria to be a function of engine torque is acknowledged, however, the engine starting and clutch skating causes stipulation of the torques 4, 6, 7. The electronic control device ([009],

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last line) has to recognize that engine starting and clutch skating (i.e., via 215, 250, etc.) are occurring for those torques to be stipulated. The starting and skating are criteria for satisfying engine torque because the torque can't be transferred if these criteria are not met.

### ***Claim Objections***

Claims 2-4 are objected to because of the following informalities:

-the recited limitation "at least one engine characteristic" in the above claims should be changed to "at least one current engine characteristic" as introduced in claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-4, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the driving speed" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2785238 (IDS). FR discloses an engine torque control system for a powertrain operated as a manual transmission, wherein when at least one approval criteria (starting off and clutch skating) for an engine torque (2) which is dependent on driving state of the vehicle is met (acceleration position and/or gear ratio) , stipulating a default engine torque (4, 6 or 7) which can be reduced relative to a set point engine torque (2a) required by the position of an accelerator [0039] of the vehicle, and wherein the default torque is determined as a function of at least one current engine characteristic (the torques 4, 6, 7 is determined as a function of the predetermined torque 2a because these torques are limited under the torque 2a, so without knowing what the torque 2a is, the control unit wouldn't know the amount of reduction needed for the torques 4, 6, 7, also torque 2a is a current engine characteristic because this torque is considered to be the torque which is occurring when the torques 4, 6, 7 are not used.). As to claim 10, FR discloses the default torque (4, 6 or 7) deviating (Figure 1) from the setpoint torque (2a) on an action of at least one of a throttle valve, the ignition and the fuel injection of the vehicle (well known in art to have engine torque adjusted using one or all of the above). As to claim 14, FR discloses the default engine torque in the process of vehicle starting stipulated for avoiding damage to a clutch of the vehicle (torque limiting during starting/restarting lowers clutch demand [0016] which is well known to avoid clutch wear over time).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 8-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata et al 6258008 (IDS reference) in view of Hess. (As to claim 1), Tabata discloses a method of controlling the engine having a manual transmission wherein the engine torque is reduced dependent on operating conditions of the vehicle (discloses that the transmission for engine torque reduction can be manual) to avoid damage to a clutch of the vehicle during restart of the engine (as to claim 14). Tabata doesn't disclose the method for reducing the engine torque as claimed.

As to claim 1, Hess et al discloses an engine torque control system wherein when at least one approval criteria is satisfied for engine torque which is dependent on driving state (i.e., steady state condition, column 3, line 51) of the vehicle (operating states, column 1, lines 54-67, these states are approval criteria because they have to be recognized by the control unit for stipulating the Mi torques for satisfying the engine torque, column 3, lines 14-23), stipulating a default engine torque (Mi-des-L or Mi-des) which can be reduced relative to a setpoint torque (Mi-ped) required by the position of an accelerator (beta) of the vehicle (column 3, lines 55-58 suggest that if the driver changes pedal position, then the values assume different values which suggest that the default torques Mi-des can be reduced or increased according to pedal position) and the

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default torque is determined as a function of at least one current engine characteristic (via 32 or 34).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata with the engine torque reduction method in view of Hess to optimize the dynamic of engine torque control during certain operating states of the vehicle.

As to claim 8, Hess discloses the default torque being determined by applying a torque factor (Mi-far) to the setpoint torque (Hess discloses that Mi-ped is interpolated into multiple torques Min, Max to come up with Mi-far). As to claim 9, Hess discloses that the factor is determined from a characteristic map (the block 102 should disclose a table or map for storing the min, max values to come up with the factor. As to claim 10, Hess discloses the default torque deviating from the setpoint torque to initiate a throttle valve (via 12 or 14 and 16).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata in view of Hess as applied to claim 1 above and further in view of Mabuchi et al 6742498. Tabata in view of Hess discloses a default engine torque, but does not disclose it being used for influencing engine noise.

Mabuchi et al discloses control of engine torque by setting a target torque to eliminate engine speed noise during idling.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata in view of Hess with an engine noise control

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using engine torque control in view of Mabuchi et al to eliminate engine noise during idling.

***Allowable Subject Matter***

Claims 5-7 and 15-20 are allowed.

Claims 2 (and 3, 4, 11 and 12 as being dependent from 2) would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-F 9:30AM TO 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Le can be reached on 571-272-7092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tdl  
/TISHA D. LEWIS/  
Primary Examiner, Art Unit 3655  
December 15, 2010